

DEPOSITION OF H. H. ROBERTS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

 **COPY**

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DEPOSITION OF H.H. ROBERTS, taken pursuant to
stipulation and agreement before Shannon M.
Williams, Certified Court Reporter and Commissioner
for the State of Alabama at Large, in the offices of
City Hall, 601 12th Street, Phenix City, Alabama, on
Wednesday, April 4, 2007, commencing at
approximately 12:37 p.m. EST.

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1 APPEARANCES

2 FOR THE PLAINTIFF:

3 THOMAS A. WOODLEY
4 Woodley & McGillivary
5 1125 15th Street N.W.
Suite 400
Washington, D.C. 20005

6 FOR THE DEFENDANTS:

7 JAMES P. GRAHAM, JR.
8 712 13th Street
P.O. Box 3380
9 Phenix City, Alabama 36868-3380

10 JAMES R. MCKOON, JR.
11 McKoon & Thomas
12 925 Broad Street
P.O. Box 3220
13 Phenix City, Alabama 36868-3220

14 ALSO PRESENT:

15 David Davis
16 Wallace Hunter
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1 STIPULATIONS

2 It is hereby stipulated and agreed by and
3 between counsel representing the parties that the
4 deposition of H.H. ROBERTS is taken pursuant to the
5 Federal Rules of Civil Procedure and that said
6 deposition may be taken before Shannon M. Williams,
7 Certified Court Reporter and Commissioner for the
8 State of Alabama at Large, without the formality of
9 a commission; that objections to questions other
10 than objections as to the form of the questions need
11 not be made at this time but may be reserved for a
12 ruling at such time as the deposition may be offered
13 in evidence or used for any other purpose as
14 provided for by the Federal Rules of Civil
15 Procedure.

16 It is further stipulated and agreed by and
17 between counsel representing the parties in this
18 case that said deposition may be introduced at the
19 trial of this case or used in any manner by either
20 party hereto provided for by the Federal Rules of
21 Civil Procedure.

22 * * * * *

1 H.H. ROBERTS

2 The witness, having first been duly sworn
3 or affirmed to speak the truth, the whole truth and
4 nothing but the truth, testified as follows:

5 THE REPORTER: Usual stipulations?

6 MR. GRAHAM: We do want to read and sign.

7 EXAMINATION

8 BY MR. WOODLEY:

9 Q. Could you state your full name for the
10 record, please?

11 A. Herbert Hayes Roberts.

12 Q. Mr. Roberts, I know you've been sitting in
13 on the two depositions that we had earlier this
14 morning, correct?

15 A. That's correct.

16 Q. But for the record of your deposition, I
17 want a couple things to be clear. First of all, my
18 name is Tom Woodley, and I'm one of the plaintiff's
19 attorneys representing David Davis in this lawsuit.
20 You understand that?

21 A. I do.

22 Q. Okay. Have you ever had your deposition
23 taken before in a previous case?

24 A. I have.

25 Q. Is that more than one previous case?

1 A. Yes, sir.

2 Q. How many? Ten?

3 A. I have been with the city 34 years. I'm ex
4 law enforcement and I've had several depositions.

5 Q. In light of that experience, I take it
6 you're familiar with the procedures we'll be
7 following in this deposition?

8 A. Yes, sir.

9 Q. And have you had an opportunity before
10 today to discuss with the city attorneys the nature
11 of this lawsuit and the issues that are involved?

12 A. I have.

13 Q. Well, again, I'll be asking you a number of
14 questions, and we expect you to give the best
15 answers that you're able to give. You understand
16 that?

17 A. Yes, sir.

18 Q. And everything that you and I say will be
19 taken down by this court reporter.

20 A. Yes, sir.

21 Q. And she will put it in a transcript form,
22 and we should have that available perhaps as early
23 as next week. Do you understand that?

24 A. I understand that.

25 Q. If at any time you don't hear or understand

1 one of my questions, stop me right away and I'll be
2 glad to repeat or rephrase that question. Do you
3 understand that?

4 A. Yes, sir.

5 Q. And, of course, most importantly, you are
6 under oath, sworn to tell the truth under the
7 penalty of perjury. Do you understand that,
8 Mr. Roberts?

9 A. I understand that fully, sir.

10 Q. All right. Let's get into it. What is
11 your current position that you hold with the city?

12 A. City manager.

13 Q. And how long have you held the position of
14 city manager?

15 A. I was first appointed in 2002. Latter part
16 of 2001, excuse me -- 2002 -- five years.

17 Q. Were you appointed by the city council?

18 A. Yes, sir, I was.

19 Q. Okay. And did you work for the city in
20 another capacity before that?

21 A. I did.

22 Q. What was that?

23 A. I was assistant city manager as well as
24 director of code enforcement.

25 Q. How long did you hold that job?

1 A. Since 1973 as an enforcement guy, and as
2 assistant city manager since 1998 -- or '96, excuse
3 me.

4 Q. In your job as a city manager, what are
5 your basic duties and responsibilities?

6 A. The basic day-to-day operations of the
7 city.

8 Q. Okay. Let me invite your attention to a
9 binder of exhibits which you have in front of you,
10 Mr. Roberts, and Mr. Graham also has a full set of
11 these exhibits available to him. And Exhibit
12 Number 8 is the charter of the City of Phenix City;
13 is that right?

14 A. That's correct.

15 Q. Okay. I take it you're pretty familiar
16 with the provisions of this city charter?

17 A. Fairly familiar, yes, sir.

18 Q. And, as I understand it, the city council
19 consists of five members; is that true?

20 A. That's correct.

21 Q. And one of those members is the mayor of
22 the city?

23 A. That's correct.

24 Q. And those are elected positions?

25 A. Yes, sir.

1 Q. Okay. If you could turn to Section 4 of
2 the city code which deals with the powers and duties
3 of the city manager. And I take it it's true that
4 you're familiar with those provisions of the charter
5 as well?

6 A. I am, sir.

7 Q. And is it accurate to say that you, as the
8 city manager, are the head of the administrative
9 branch of the city government?

10 A. Yes, sir.

11 Q. And you're accountable and responsible to
12 the city council?

13 A. Yes, sir.

14 Q. Are you accountable or responsible in any
15 way to the city's mayor?

16 A. Not as a whole, no, sir.

17 Q. And when you say not as a whole, what do
18 you mean by that?

19 A. I work for the entire city council. I
20 answer to all of them equally.

21 Q. And under the city code, particularly
22 Section 4, you are responsible as the city manager
23 to enforce the laws and ordinances?

24 A. I am.

25 Q. And do you have the authority to appoint

1 officers and employees of the city?

2 A. I do.

3 Q. And when it says appoint, does that mean
4 hire?

5 A. The appointed -- you appoint your division
6 heads and, of course, your department heads, which
7 is different from your Merit System employees. I
8 appoint those.

9 Q. What about a person that wants to be hired
10 in the city fire department? Who has that hiring
11 authority?

12 A. I would ultimately okay it. That's given
13 down to each of the chiefs or department heads.

14 Q. Okay. So if Fire Chief Hunter wants to
15 hire a person in the fire department, he sends that
16 up to you, you approve it, and then he's authorized
17 to hire?

18 A. Let me explain that to a great degree.

19 Q. Sure.

20 A. Once they have went through that process of
21 testing, the chief or any department head will hire
22 their own employee. I try not to get involved in
23 the hiring of the day-to-day everyday employees.
24 That's between the personnel director, the personnel
25 department, and the various departments. I do

1 approve or hire all department heads or appointed
2 division chiefs.

3 Q. All right. What about with regard to a
4 possible termination or discharge of an employee in
5 the fire department? What's your role in that?

6 A. The Merit -- the charter, of course, says
7 that I'm responsible for all hires and terminations,
8 as you are well aware. However, there is a section
9 where I can delegate that hiring and terminations to
10 the department heads, of which I have done. I let
11 the department heads manage their own affairs within
12 the department.

13 The reasons for that is probably two-fold.
14 Number one, if there's an appeal process that's
15 going to take place, the ultimate decision is going
16 to come back to me, and then that's when I really
17 try to get more involved during the normal course of
18 any termination or any disciplinary action.

19 Q. And specifically with regard to the
20 plaintiff, David Davis, in this case, were you the
21 ultimate decision maker on his termination of
22 employment?

23 A. I was the ultimate decision maker.

24 Q. Okay. You want to add something?

25 A. No, that's good.

1 Q. I'm sure we'll cover that again, so if you
2 have another thought, you'll have a chance to
3 express it.

4 Then going on to Section 9 of the city charter
5 which, in part, addresses the removal of officers
6 and employees. Does that Section 9.01 also give you
7 the authority, as the city manager, to remove
8 employees of the city?

9 A. Yes, sir, it does.

10 Q. Okay.

11 A. It will also say subject to the approval of
12 such -- if you have a Civil Service board, which we
13 do not. We have a Merit System. We have a
14 Personnel Review Board that would review any of the
15 classified workers, which is anything other than the
16 department heads or the division chiefs.

17 Q. What's your understanding as the difference
18 between a Civil Service commission or board and a
19 Personnel Board that sits here?

20 A. Usually a Civil Service board is what we
21 had when we was under the old commission form of
22 government, three-man, and usually it dealt
23 specifically with usually police and fire in our
24 instances as a three-man commission form of
25 government.

1 When we changed forms of government and became
2 under a council/manager form of government, we had
3 no protection or anything as far as our other
4 employees were concerned, and we chose to go -- or
5 the council at the time chose to go to a Merit
6 System which covered everyone and we did away with
7 the Civil Service board.

8 Q. Okay. Under the current system and the
9 system that applied to Mr. Davis's termination, it
10 was a Personnel Board procedure; is that correct?

11 A. It was an appeal to the Personnel Review
12 Board, and they made the decision, and I upheld the
13 decision.

14 Q. Just so I understand the process,
15 Mr. Davis, for example, a firefighter employed in
16 the city's fire department, was terminated. Then he
17 had the right to appeal that decision to the
18 Personnel Board, correct?

19 A. That's correct.

20 Q. And he, in fact, did that --

21 A. He did.

22 Q. -- correct? And then after that decision
23 of the Personnel Board, it goes to your desk as a
24 city manager to make the final decision on the
25 termination such as in the case of Mr. Davis?

1 A. That's correct.

2 Q. And when that decision involving Mr. Davis
3 came from the Personnel Board to you, did you have
4 the authority to approve the decision of the board
5 or disapprove as well?

6 A. I could have overruled the board or I could
7 have approved the board. In this case, I listened
8 to the case. I went along with the board's reading
9 and followed their advice.

10 Q. The board's decision, does that come as a
11 recommendation to you?

12 A. Yes, sir, it does.

13 Q. So it's not a decision as such; it's a
14 recommendation to the city manager?

15 A. It's a recommendation to me that I can
16 either accept or deny. If I deny, then, of course,
17 it would go before the full council for a hearing.

18 Q. But if you approve the Personnel Board's
19 recommendation as you did in the Davis case, that's
20 the end of the matter?

21 A. Yes, sir, it is.

22 Q. So Mr. Davis did not have the opportunity
23 or the right to go to the city council to appeal his
24 termination?

25 A. That's correct, sir. When I say that's the

1 end of it, of course, you know, the civil process.

2 Q. What do you mean civil process?

3 A. Court procedures.

4 Q. Which is where we find ourselves.

5 A. Unfortunately.

6 Q. Does the mayor play any role in the
7 termination of city employees?

8 A. No, sir, he does not, unless it's a city
9 manager. I know of no one since '77 since we've
10 been under this form which has not followed a
11 recommendation of the Personnel Review Board. That
12 would be the only way -- and I'm not going to say
13 mayor, but that would be the only way a council
14 would be involved in a termination --

15 Q. Okay.

16 A. -- or suspension. It could be either/or.

17 MR. GRAHAM: Let's go off the record a
18 minute.

19 MR. WOODLEY: Sure.

20 (Discussion held off the record.)

21 MR. WOODLEY: Back on the record.

22 Q. In the particular case of Mr. Davis and his
23 termination -- and we've already covered the ground
24 of what the Personnel Board did, and you upheld that
25 recommendation -- what would have happened, if

1 anything, if a couple of the city council members
2 wanted to take up the termination of Mr. Davis?
3 Would they have the authority under the city charter
4 or any other law to take up that matter?

5 A. My understanding is that they do not.

6 Q. Okay. And the mayor himself, as mayor,
7 doesn't have the authority to overrule your decision
8 upholding the termination of Mr. Davis, does he?

9 A. No, sir, he does not.

10 Q. Okay. Now, let me ask you -- we have an
11 exhibit if you want to refer to it; it happens to be
12 Exhibit 4 -- there is an Alabama State Code
13 provision that gives firefighters in the State of
14 Alabama the right to belong to a labor organization
15 or to choose not to belong to a labor organization.
16 Are you aware of that?

17 A. I am aware of that.

18 Q. Are you aware that that same Alabama State
19 Code provision gives firefighters the right, through
20 their representatives such as a labor organization,
21 to make proposals to their employers concerning
22 salaries and other conditions of employment?

23 A. I'm very much aware of that.

24 Q. Okay. And are you aware that that same
25 Alabama State Code provision prohibits a person from

1 discharging or discriminating against any
2 firefighter when he or she may exercise the rights
3 to belong to or lead a local labor association or to
4 make proposals?

5 A. Yes, sir. I understand that.

6 Q. And how long have you understood that
7 roughly?

8 A. I have been a IBEW member since I was 19
9 years old.

10 Q. Are you still an IBEW member?

11 A. No, sir. I've had my 30 years.

12 Q. Thirty years? Did you work as an
13 electrician?

14 A. Yes, sir. I'm a master electrician.

15 Q. Are you still working as an electrician?

16 A. I have my state license, yes, sir, but I'm
17 not allowed to do any side work.

18 Q. Have you ever been a member of another
19 union before?

20 A. No, sir.

21 Q. Are you aware that the firefighters here
22 employed by the City of Phenix City have their own
23 labor organization?

24 A. I am.

25 Q. Do you know how long that has existed?

1 A. They have had a local here for quite
2 awhile. I don't know the exact number of years, but
3 they've had a local for quite awhile.

4 Q. Are you aware that the police employed by
5 the City of Phenix City also have an association?

6 A. I've been a member of the FOP, sir.

7 Q. You've been a member of the FOP?

8 A. Yes, sir.

9 Q. Because you worked in the police
10 department?

11 A. Yes, sir.

12 Q. Are you still a member of the FOP?

13 A. No, sir, not since I moved up here. I
14 still hold my law enforcement certification due to
15 retirement purposes with the state, but I -- in a
16 management level, I felt that would be
17 inappropriate.

18 Q. In your last three years, I think it was,
19 as city manager here in the city, have you had
20 occasions to meet with leaders or members of the
21 FOP --

22 A. I have -- go ahead. Excuse me. I'm
23 sorry.

24 Q. -- meet with leaders or members of the
25 FOP?

1 A. I have daily contact with some of the FOP
2 members. I have not met with them. I have, since I
3 have been back, met with some of the International
4 Association of Firefighters.

5 Q. Okay. Has the FOP ever made any proposals
6 to you, as the city manager, concerning the salaries
7 or working conditions of police officers?

8 A. No, sir.

9 Q. Has the International Association of
10 Firefighters or the local affiliate here in Phenix
11 City ever made any proposals to you concerning
12 firefighter salaries or employment conditions?

13 A. Yes, sir.

14 Q. As I understand it, Mr. Roberts, the fire
15 chief here in the city reports and is accountable to
16 you as the city manager; is that correct?

17 A. Yes, sir.

18 Q. Does the fire chief have the right, if he
19 wanted to, to bypass you as the city manager and
20 address the city council on issues that he may
21 consider important in the fire department?

22 A. I'm going to answer this in this way. I
23 would hope that he wouldn't bypass me. In a
24 paramilitary organization, you certainly don't want
25 someone subordinate going around you. I have never

1 had that to happen under our tenure. They're given
2 a chance -- the department heads are given a chance
3 to express their budget shortfalls -- or any
4 department head, not just the fire department -- at
5 proper times.

6 I would also like to add that if there's any
7 problem within any of the departments, I would hope
8 that I would go or either follow the proper
9 procedure to look into what their complaint is or
10 their shortcomings may be.

11 Q. What would happen if Fire Chief Hunter next
12 month did not discuss an issue with you first but
13 went directly to a city council meeting about a fire
14 department operations issue and spoke to the city
15 council? Would he be subject to discipline or
16 charged with violating the charter of the city or
17 the Merit System --

18 A. Well --

19 Q. -- let me finish -- or the Merit System
20 regulations?

21 A. Number one, the fire chief and division
22 chiefs are not covered under the Merit System, by
23 Attorney General opinion and, also, you know,
24 they're an at will employee. They work strictly for
25 me.

1 I would hope that I would not have a department
2 head to do that. If he did, then I would probably
3 take the appropriate actions probably according to
4 what he discussed with them or something of that
5 magnitude.

6 Q. When you say appropriate action, what would
7 be the range of actions that you could take?

8 A. You know, it could come down to a
9 counseling or maybe a termination. It's -- you
10 know, that's hypothetical.

11 Q. And what is it that might be violated if
12 the chief went directly to the council on an issue
13 affecting the fire department? Is it a charter code
14 provision or is there something else in writing?

15 A. No, sir, it's not. No, it's not.

16 Q. Under the Merit System rules and
17 regulations, are disciplinary actions such as
18 dismissals from employment subject to review as
19 grievances?

20 A. I would have to look at -- there are
21 certain ways that we have to do a grievance. I
22 really need to read the exact procedures that goes
23 in. Some may be a grievance that's going on within
24 the city that I would act on myself rather than a
25 Personnel Review Board hearing. Usually anything